

## **complaint**

Miss C and Mrs C complain that MBNA Limited (MBNA) rejected a claim under section 75 of the Consumer Credit Act 1974 (referred to in this decision as 'section 75').

## **background**

Mrs C had a credit card from MBNA and her daughter, Miss C, was an additional card holder on her account. Miss C had a cosmetic procedure, as recommended by the clinic where she had the procedure, to treat a condition. The initial deposit was paid on Miss C's debit card. But, with Mrs C's permission, Miss C paid for part of the procedure using her additional credit card.

After treatment had started, Miss C felt her condition was getting worse. She went to her GP and was told the treatment had to stop because it wasn't appropriate for the condition she had. When she contacted the clinic to complain and ask for a refund, the clinic refused and said Miss C hadn't told it about the pre-existing condition. On further investigation, Mrs C says she discovered that the practitioners at the clinic don't have any medical qualifications.

Mrs C complained to MBNA. MBNA, however, didn't agree to meet the claim. They said that the underlying contract was between Miss C and the clinic. But the credit card was in Mrs C's name. And so MBNA explained section 75 doesn't apply in that situation. Mrs C and Miss C have referred the matter to us.

Mrs C says that MBNA should meet the claim against the clinic that sold the cosmetic procedure. Mrs C says her understanding of section 75 is that, where a purchase is made with the primary card holders consent and they expressly requested the purchase, protection must be offered. Mrs C goes on to say that she gave Miss C authority to have the treatment and use her credit card to pay for it. And she's paid for other procedures for her daughter before in a similar way.

Our adjudicator looked at this matter but he agreed with MBNA. Miss C and Mrs C don't agree with this. So the matter has been passed to me for a decision.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. But, now I've done that, I agree with the adjudicator.

One effect of section 75 is that, subject to certain limitations, a person who pays a supplier for goods or services with their credit card can make a claim against the credit card issuer if the supplier doesn't keep to the agreement or misrepresents it.

To succeed, a section 75 claim has to meet certain criteria. One of the key criteria is that there needs to be an unbroken 'debtor – creditor - supplier' chain.

1. The debtor, who has an obligation to make finance repayments to the creditor:
2. The creditor, who has an obligation to send the finance amount to the supplier: and
3. The supplier, who has an obligation to supply the goods or services to the debtor.

If this 'debtor – creditor - supplier' chain has been broken it means that the debtor cannot make a claim against the credit card company.

In this case, Mrs C is the debtor, MBNA is the creditor and the clinic is the supplier. However, the clinic doesn't have an obligation to supply the goods or services to Mrs C, the debtor. In fact, Miss C is the one who had an agreement with the clinic and so the clinic was obliged to supply the service of the cosmetic procedure to her, not Mrs C. Because of this, the 'debtor - creditor - supplier' chain has been broken and a section 75 claim can't be made.

Mrs C says that Miss C paid for part of the procedure on Mrs C's credit card account and with her permission, so the chain isn't broken. But purchases made by an additional cardholder don't maintain the supplier - debtor part of the chain unless the goods or services are bought for the benefit of the main cardholder. In this case the procedure was for Miss C and only she directly benefits from it. All the emails with the clinic are in her name and she paid the initial deposit on her debit card. I do understand that Mrs C would've been happy and pleased for her daughter if this cosmetic procedure had successfully treated Miss C's condition. But I don't think Mrs C has shown that it was for her benefit as well as that of her daughter. From everything I've seen, I think that any benefit Mrs C might get from it would've been incidental to Miss C's happiness and relief at having been successfully treated herself.

Taking everything into account, I'm afraid to tell Miss C and Mrs C that I agree with MBNA and our adjudicator in this matter. So I don't think it'd be fair to require MBNA to do anything to resolve this matter.

I'm sorry to disappoint Mrs C and Miss C but their complaint remains with the clinic direct. They might want to take the matter further through other routes given how strongly they feel about what's happened. But my decision brings to an end what we, in seeking to resolve their dispute with MBNA informally, can do for them.

### **my final decision**

For the reasons set out above, my final decision is that I don't uphold this complaint against MBNA Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mrs C to accept or reject my decision before 24 May 2017.

Rebecca Ellis  
**ombudsman**